

Request for Reconsideration after Final Action

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	77717768
LAW OFFICE ASSIGNED	LAW OFFICE 116
MARK SECTION (current)	
STANDARD CHARACTERS	YES
USPTO-GENERATED IMAGE	YES
LITERAL ELEMENT	MEAN, BUT GREEN
MARK STATEMENT	The mark consists of standard characters, without claim to any particular font style, size or color.
MARK SECTION (proposed)	
MARK	MEAN BUT GREEN
STANDARD CHARACTERS	YES
USPTO-GENERATED IMAGE	YES
LITERAL ELEMENT	MEAN BUT GREEN
MARK STATEMENT	The mark consists of standard characters, without claim to any particular font style, size or color.
ARGUMENT(S)	
Please see the actual argument text attached within the Evidence section.	
EVIDENCE SECTION	
EVIDENCE FILE NAME(S)	
ORIGINAL PDF FILE	evi_204124240253-152922486_._OA_Response_-_MEAN_BUT_GREEN.pdf
CONVERTED PDF	

FILE(S) (4 pages)	\\TICRS\EXPORT11\IMAGEOUT11\777\177\77717768\xml6\RFR0003.JPG
	\\TICRS\EXPORT11\IMAGEOUT11\777\177\77717768\xml6\RFR0004.JPG
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DESCRIPTION OF EVIDENCE FILE	Text of response
SIGNATURE SECTION	
RESPONSE SIGNATURE	/Laura M. Konkel/
SIGNATORY'S NAME	Laura M. Konkel
SIGNATORY'S POSITION	Associate of attorney of record, WI bar member
DATE SIGNED	12/20/2010
AUTHORIZED SIGNATORY	YES
CONCURRENT APPEAL NOTICE FILED	YES
FILING INFORMATION SECTION	
SUBMIT DATE	Mon Dec 20 15:34:29 EST 2010
TEAS STAMP	USPTO/RFR-204.124.240.253 -20101220153429320557-777 17768-4705848f05c974d217e 3182e6f3750baaa-N/A-N/A-2 0101220152922486194

**Request for Reconsideration after Final Action
To the Commissioner for Trademarks:**

Application serial no. **77717768** has been amended as follows:

MARK

Applicant proposes to amend the mark as follows:

Current: MEAN, BUT GREEN (standard characters)

Proposed (USPTO generated image): MEAN BUT GREEN (Standard Characters, see mark)

The mark consists of standard characters, without claim to any particular font, style, size, or color.

ARGUMENT(S)

In response to the substantive refusal(s), please note the following:

Please see the actual argument text attached within the Evidence section.

EVIDENCE

Evidence in the nature of Text of response has been attached.

Original PDF file:

evi_204124240253-152922486_._OA_Response_-_MEAN_BUT_GREEN.pdf

Converted PDF file(s) (4 pages)

Evidence-1

Evidence-2

Evidence-3

Evidence-4

SIGNATURE(S)

Request for Reconsideration Signature

Signature: /Laura M. Konkel/ Date: 12/20/2010

Signatory's Name: Laura M. Konkel

Signatory's Position: Associate of attorney of record, WI bar member

The signatory has confirmed that he/she is an attorney who is a member in good standing of the bar of the highest court of a U.S. state, which includes the District of Columbia, Puerto Rico, and other federal territories and possessions; and he/she is currently the applicant's attorney or an associate thereof; and to the best of his/her knowledge, if prior to his/her appointment another U.S. attorney or a Canadian attorney/agent not currently associated with his/her company/firm previously represented the applicant in this matter: (1) the applicant has filed or is concurrently filing a signed revocation of or substitute power of attorney with the USPTO; (2) the USPTO has granted the request of the prior representative to withdraw; (3) the applicant has filed a power of attorney appointing him/her in this matter; or (4) the applicant's appointed U.S. attorney or Canadian attorney/agent has filed a power of attorney appointing him/her as an associate attorney in this matter.

The applicant is filing a Notice of Appeal in conjunction with this Request for Reconsideration.

Serial Number: 77717768

Internet Transmission Date: Mon Dec 20 15:34:29 EST 2010

TEAS Stamp: USPTO/RFR-204.124.240.253-20101220153429

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MEAN BUT GREEN

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	NuTek, LLC	Filed:	04-20-2009
Mark:	MEAN BUT GREEN	Examiner:	Ellen Awrich
Serial No.:	77/717,768	Law Office:	116

REQUEST FOR RECONSIDERATION

I. Introduction

This is a response to the Office Action issued July 14, 2010. The Examiner has maintained her refusal to register Applicant's mark based on a likelihood of confusion with Registration Nos. 3,717,598 and 3,717,597 for the marks MEAN GREEN and MEAN GREEN & Design for "degreasing agents, not for household use" in Class 1 and "all-purpose cleaners for household and industrial use; degreasing preparations for household use" in Class 3, both of which are owned by CR Brands, Inc. Applicant respectfully submits that its mark is not likely to be confused with the cited registrations and therefore requests that the refusal be withdrawn.

II. Standard of Law

In the case of *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357 (C.C.P.A. 1973), the court set forth the factors relevant to a determination of likelihood of confusion. In addition to the dissimilar nature of the parties' marks in their entireties as to appearance as argued in Applicant's prior office action response, other factors considered in a likelihood of confusion analysis include the similarity and nature of the goods offered under the marks and any other established fact probative of the effect of use. *Id.* at 1361. The Federal Circuit has explained that dissimilarity based on even one of the relevant factors can warrant a finding of no likelihood of confusion. *Kellogg Co. v. Pack'em Enter., Inc.*, 21 U.S.P.Q.2d 1142 (Fed. Cir. 1991). Based

on an evaluation of the aforementioned factors, Applicant maintains that confusion between its mark and the cited registrations is unlikely.

III. A Notice of Allowance Has Been Issued For Applicant's Co-Pending MEAN BUT GREEN & Design Application

Applicant draws the Examiner's attention to its Application Serial No. 77/866,245 for the mark MEAN BUT GREEN & Design for goods nearly identical to those covered by the subject application: "environmentally friendly all-purpose lubricants in spray, dropper, and tube-packaged form for general purpose, sporting equipment, domestic, office, commercial, and industrial use" in Class 4. The opposition period for Application No. 77/866,245 has elapsed and a Notice of Allowance was issued on November 2, 2010. This indicates that neither the USPTO nor any third-parties, including the owner of the registrations cited by the Examiner in the subject case, believe that registration of Applicant's MEAN BUT GREEN & Design mark is likely to create consumer confusion. Applicant submits that the USPTO should act consistently in its treatment of applicant's co-pending applications and that the subject MEAN, BUT GREEN application should likewise be approved for publication.

IV. The Goods are Not Related

Courts have taken great care in distinguishing products or services that at first blush seem related, but upon examination are not when attention is paid to the intended and customary uses for the products. *See, e.g., In re Fesco Inc.*, 219 U.S.P.Q. 437 (T.T.A.B. 1983) (no confusion likely between FESCO and Design for distributorship services in the field of farm equipment and machinery and FESCO for fertilizer processing machinery and equipment); *Chase Brass and Copper Co. v. Special Springs, Inc.*, 199 U.S.P.Q. 243 (T.T.A.B. 1978) (BLUE DOT for springs for engine distributors not likely to cause confusion with BLUE DOT for brass rods, although both products are used in new automobile manufacture).

The goods covered by Applicant's mark are sufficiently different from the those offered under the cited registrations to avoid any likelihood of confusion. Applicant's goods are lubricants. These products are used to lessen friction, especially in the working parts of a mechanism. In sharp contrast, the cited registrations cover degreasing agents and all-purpose cleaners used to remove grease, oil, or other substances. Applicant's goods and the goods covered by the cited registrations are used for entirely different and conflicting purposes, obviating any likelihood of confusion.

The Examiner has cited a number of third-party registrations for marks used in connection with goods that are the same as or similar to those of Applicant and the cited registrant in this case. Two of these registrations are owned by the same registrant, Crown Equipment Corporation. Multiple registrations owned by the same party have no probative value. *See In re The Orvis Co., Inc.*, Serial No. 78276739 (T.T.A.B. October 22, 2007) (nonprecedential) ("Of the remaining fifteen registrations, three are owned by the same entity and, thus, two of these registrations are redundant for purposes of exemplifying the goods registered by that entity. Therefore, we find that the examining attorney has submitted thirteen third-party registrations that may be probative of the issues herein."). The Examiner argues that the other cited registrations have probative value to the extent they suggest that the goods listed therein are of a kind that may emanate from a single source, citing *In re Mucky Duck Mustard Co.*, 6 U.S.P.Q.2d 1467 (T.T.A.B. 1988). Applicant notes that the Board in *Mucky Duck* stated that third-party registrations "although not evidence that the marks shown therein are in use on a commercial scale or that the public is familiar with them, may nevertheless have some probative value to the extent that they may serve to suggest that the goods or services are of a type which may emanate from a single source." *Id.* at 1470 n.6 (emphasis added). As this language indicates,

the Board has been very reluctant to accord even minimal evidentiary value to third-party registrations for the purposes of showing that two types of goods are related.

Moreover, Applicant submits that the registrations cited by the Examiner are too few in number to sufficiently support her refusal to register. A low number of such registrations may, under some circumstances, suggest that the goods or services are in fact not related. *See In re Coors Brewing Co.*, 68 U.S.P.Q.2d 1059, 1063 (Fed. Cir. 2003) (“[A]lthough the Board had before it a few registrations for both restaurant services and beer, . . . the small number of such registrations suggests that it is quite uncommon for restaurants and beer to share the same trademark.”). Applicant notes that even if there are a sufficient number of probative third-party registrations of record, they are not conclusive on the question of relatedness. *See In re Platinum Services, Inc.*, Serial No. 77181654 (T.T.A.B. September 28, 2009) (nonprecedential) (“while the examining attorney’s third-party registration evidence were probative of the fact that the involved services may emanate from the same source, it does not establish that such services travel in the same channels of trade and are bought by the same purchasers”).

V. Conclusion

For the reasons set forth herein and in Applicant’s prior office action response, Applicant respectfully requests that the Examiner withdraw her refusal to register Applicant’s mark and permit the application to proceed to publication.